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Subject:—

Opinions under the Bombay

Civil Services Rules.

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14/1/48. 22/1

Submitted.

2. Mr. M.D. Khare formerly a peon in the office of the Provincial National Savings Officerr Bombay, made an application to the Chief Secretary to Government that he has bot been given his pay for the month of March 1946 and the some may be given to him. The provincial National Savings Officer however in his u.o.r to the F.D. on p.17 on the strength of the reports of his assistant (p.19) and statements (pp. 27-29) of two peons from his office alleges that the salary of Mr. Khare was paid to him in the presence of some persons, thougi Mr. Khare has not signed on the office copy of the pay oills and further states that "perhaps Mr. Khare is under the impression that payment of his salary cannot be proved by any means other than his signature on the office copy. It is true that the correct procedure was not strictly followed in this case, but that is no reason for allowing Khare to claim again the salary which according to four witnesses was paid to him". He also alleges dishonesty to the said peon. The F.D. in its note observes that-

"so long as the acquittance roll has not been attested the peon's legal claim to his salary cannot be set aside merely on the evidence of his past character" and that "assuming that it (the payment) was made without obtaining signature prior to the payment of his salary as re uired by the rule (in G.R.F.D. No 7167 dated 19-12-1930) the disbursing officer isresponsible for consequences of non-observance of the rules". The papers are forwarded to the R.L.A. to confirm this view.

3. Under orders of Government contained in para 1(2) of G.R.,F.D., No 7165 dated the 19th December 1930, the receipt of the payees has to be taken in the office copy of the pay bills. If as stated the payment was made without obtaining the signature of Mr. Khare then it is a breach of Government orders and exposes the defaulter to reimbursement of the loss occassioned. (Please see in this connection R.L.A's opinion No 111, dated the 7-1-1941). The absence of payee's receipt is a prima facie ground to hold that he has not received his pay but if however Government considers that there is sufficient evidence to show that the peon Khare has actually received his pay he may be refused payment and asked to go to a court of Law.

Id/ 22/3/ -

A.S.

The decisions specified the letter from the Government of India, No D.2689-A, dated 18-9-1929 were adopted by the Government of Bomba throughout the Presidency and Sing and the G.R.F.D. No 7167 dated 19-12-30 laid down the following instruction s for the guidance of all heads of offices:-

(1) The maintenance of separate acquittance rolls should be dispensed with.

(2) The receipt of the payees should be taken in the office copy of the pay bills.

(3), (4) x x x x x

The head of an office is personally responsible for every pay drawn on a bill signed by him or on his behalf, until he has paid it to the person entitled to receive it, and obtained his receipt, duly stamped where necessary , on the office copy of the pay bill (vide rule 70 of Civil Account Code, Vol.I.) Peon Khare's

contention that he has not been paid his salary for the month of March 1946 derives support from the fact that no stamped receipt of payment has been obtained from him on the office copy of the pay bill for the month of March 1946. Failure to observe the rules and orders of Government would be tantamount to negligence on the part of the disbursing officer and as such would be liable for the consequence arising out of his own neglect. Consequently the view expressed in para 2 of the F.D. office note dated 14-3-47 is correct.

The papers may be "Seen and returned".

Ur/21/4

By his letter No.S 26(a)-B, dated 5-8-1941 the D.P.I. informed the educational Inspector as follows:-

> "In view of the facts stated above no leave should be granted to Mr. Barki, nor should he be allowed to rejoin duty pending further orders from this office. He should be informed that as he failed to obey the orders issued by this office to join duty on 15-7-1941 he is considered as self-discharged"

The Educational Department in its letter No.S-49(2) 4572, dated 22-1-1943 informed the D.P.I. that his order that Mr. Barki shouldbe consideres at "Self-discharged" was bot valid as neither the Bombay Civil Services Rules nor the Bombay Civil Services Conduct, Discipline and Appeal Rules prescribed any such order and that the orders which could be made are those mentioned in rule 33 of the Bombay Civil Services Conduct Discipline Rules under which order of dismissal or removal could he been passed against Mr. Barki or else he could have been removed or required to retire under rule 165-A of the Bombay Civil Services Rules, and that as Mr. Barki had not voluntarily resigned from Government service, nor was there a valid order of his removal or dismissal he should be presumed to bestill in service. In his letter No. S-26(a)-B, dated 11-12-1943 the D.P.I. informed Government that what he meant by the orders issued by him against Mr. Barki was that "his unauthorised absence from duty from 1-6-1941 should be treated as constituting an interruption of service within the meaning of B.C.S. Rule 250 entailing cancellation of all duty counting for pension". and that as the post held by Mr. Barki had been substantially filled, it was not necessary to follow the prodedure in rule 33 of the Bombay Civil Services conduct Discipline and Appeal Rules. As however in his petitions to Government Mr. Barki also asked for pension if he was not reinstated in service E.D. issued orders sactioning

passionate pension of Rs. 15 per month under rule 185 with effect from 1-3-1945 The Compassionate pension was however later on increased to Rs. 25 per month with effect from 1-3-1945. Mr. Barki is not however satisfied nad has been pressing for his reinstatment. D.S.E.D. suggests that an inquiry into his post conduct should be made as to order of "self Discharge issued by the D.P.I. was invalid. In par. 3 of his letter no. S.2(a)-B, dated 28-10-1946 the D.P.I. observes:-

"The ground for holding an enquiry into the conduct of Mr. Barki must be that the order of self discharge passed by my predecessor is not valid and that as stated by Government in their letter No S.49(2)/4572-F, dated 22-11-1943 Mr. Barki must be looked upon as still in service. This would involve concellation of the order of self discharge and of G.R. (E.D.) No.S-51(2), dated 7-5-1946 in which compassionate pension of Rs. 25 per month was sanctioned to Mr. Barki. It would involve payment of arrears of salary to Mr. Barki for the period from June 1941 onwards unless by a fresh order he is to be considered as being under suspension during this period. I do not know how such an order and also a departmental enquiry issued and held five years after the event will look in a court of law supposting the case were to go to a court of law. I suggest therefore that the R.L.A. may be consulted regarding the legal aspect of the case before an enquiry is ordered".

The R.L.A. is re uested to give.

The order of self-dischcharge dated dated 5-8-1941 passed by the D.P.I, against Mr. Barki is notrelatable to any vision in the Bombay Civil Services. Rules Obviously

the prder of self-discharge involved Mr. Barki's removal from service and since that order was passed without an enquiry as provides in note 1 to rule 33 of the Bombay Civil Services Conduct Discipline and Accesl Rules read with Rule 165 of the Bombay Civil Services Rules, it is invalid. Rule 250 of the Bombay Civil Services Rules which lays down the circumstances which constitute an interruption of service hardly supports the view taken by the D.P.I. in his letter No. S-26(a), dated 11-12-1943 justifying his order of self-discharge. In the circumstance, the order of self-discharge passed by D.P.I. is indefensible and may beset aside. The view taken by D.S., is correct.

On the order of self-discharge being set aside Mr. Barki would be deemed to be in service and if an enquiry has to be held against Mr. Barki, he will have to be suspended from service, but such order of suspension cannot be made retrospectively. Mr. Barki will have therefore to be paid full pay until the date of his suspension. Of course, the amount paid to him as compassionate pension can be deducted therefrom.

Sd/-
Remembrancer of Legal Affairs.

U.R. to E.D., No 3765 , dated the 17th April, 1947

Mr/21/4

Office of the R.L.A.

The question for R.L.A's consideration is whether under clause(i) of rule 49 of the Civil Services (Classification, Control and Appeal) Rules, Government can appropriate towards recovery of the amount deflacated by Mr. Oza the arrear of subsistence allowance due to him under rule 151 of the Bombay Civil Services Rules.

Rules 49 of the Civil Services (Classification, Control and Appeal) Rules enumerates the classes of penalties which may be imposed upon members of the services comprised in any of the classes (1) to (5) specified in rule 14. Clause (iv) of rule 49 provides for recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Rule 151 of the Bombay Civil Services Rules, provides that a Government servant under suspension isentitled to the following aymants:-

(a) In the case of a Military officer who is liable to reverto Military duty, to the pay and allowances to ~~exceeding one-fourth of the pay of the suspended Government servant.~~
which he would have been entitled had he been suspended while in Military employment.

(b) In any other case, to a subsistence grant at such rates as the suspending authority may direct, but not exceeding one-fourth of the pay of the suspended Government servant.
Provided that the suspending authority may direct that the Government servant under suspension shall be granted in addition such compensatory allowances as the issue under this proviso.

The expression "subsistence grant" as defined in clause(52) of rule 9 ofthe B.C.S. Rules means a monthly grant made to a Government servant who is not in receipt of pay or leave salary.

The term "pay" as defined in clause (39) of rule 9 means-

(a) the amount drawn monthly by a Government servant as-
(1) the pay, other than special pay or pay granted view of his personal qualifications, which h been sanctioned for a post held by him.

SUBSTANTIVELY OR IN OFFICIATING CAPACITY OR TO

substantively or in officiating capacity, or to which he is entitled by reason of his position in a cadre;

(ii) Overseas pay, technical pay, special pay, and personal pay; and

(iii) Any other emoluments which may be specially classed as pay by Government etc.

The provisions of clauses (39) and (52) of rule 9 read together make it clear that the 'subsistence grant' paid to a Government servant under suspension under rule 151 being in the nature of an allowance for his maintenance does not fall within the meaning of "pay" and consequently under rule 49(iv) subsistence allowance cannot be appropriated towards recouping the loss sustained by Government since otherwise the very purpose of subsistence grant would be defeated (vide also Note 1 below rule 151)

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.C.D., No. 3766 dated the 17th April 1947

Mr/21/4

Submitted 4008 2/4/47.

These papers deal with the question of checking the tendency of the inferior Government servants also who are provided with rent free quarters in D.D. Chawls of sub-letting their tenements. Attention is invited to R.L.A's opinion No. 2261, dated the 26th March 1946, where in it was pointed out to the P.W.D. that the Manager of D.D. Chawls "has not power to evict inferior Government servants or their sub-tenants summarily nor can he be armed with any such power. The eviction of the inferior Government servants of their sub-tenants from the D.D. Chawls cannot be done save by due process of law".

The Director D.D. Chawls is however not in favour of eviction by process of law since it involves considerable delay, labour and expenditure to Government. The P.W.D. now therefor wants to examine to proposals of the Director of D.D. Chawls submitted the for consideration of Government. The proposals (p.59) are as follows:-

(a) Stringent action such as imposing fine of Rs.5 for the first offence and that of dismissal from service for the subsequent offence.

(b) granting house-rent allowence to all inferior Govt. servants who may reside in D.D. Chawls on payment of rent in each only. On these prpposals the D.S.,F.D. observes (pp.84-85) as gollows:

"I think that the suggestion of disciplinary action against the interior servants is reasonable and will be effective remedy against sub-letting ------ I however do not see how the alternative (b) will prevent sub-letting".

The P.W.D. agrees with the F.D. in as much as the alternative at (b) of the Directors proposals will not prevent sub-letting and has rejected the proposal at (a) and on thesuggestion of the F.D. regarding disciplinary action they state(pp.87-88)as follows:

"In this connection it may be stated that rule 4 of Section (p.358 of the manual) III of Appendix IV to the D.C.S. Rules Manual, Volume II, authorises the Director, D.D.Chawla, to decide whether the inferior Govt servant has or has not sublet his room or rooms, and after full inquiry if he comes to the conclusion that there has been subletting, to ask the inferior Govt. servant to vacate his room or rooms and then refuse him accommodation in any of the D.D.Chawla for a period of one year. Thus, the inferior Govt. servant has to remain without accommodation and the h.r.a. for a period of one year. This seems a sufficient punishment in the first instance. and then he has to take a chance in the waiting list after the expiry of the period of one year.

5. (a) As regards the suggestion of the Director, D.D.Chawla, viz., that of imposing a fine of not less than Rs.5 for the first offence and that of dismissal from service for the subsequent one vide his alternative (a) at p.57, it may be

stated that when an inferior Govt. servant is deprived of his rooms and h.r.a. for a period of one year, he gets a sufficient punishment for his offence of subletting, as stated in para. 4 supra. If, however, after the period of one year the peon secures a room and again sublets it, this can be taken as a first offence or a subsequent one as the case may be. Such cases will probably be few and the Director may be asked to report them to Govt. in this deptt., which will then request the Deptt. concerned to take disciplinary action against the inferior Govt. servant, and issue orders accordingly after submitting the papers to the H.M. concerned as well as to H.M., Labour. Thus, the question of ~~delegating~~ investing the Director, D.D.Chawls, with the power of imposing a fine or dismissal vide alternative (a) will not arise".

The P. and S.D. to whom these papers were again referred agrees (pp 89-90) with the additional remedy of disciplinary action proposed by the P.W.D. against the delinquent inferior Government servants under rule 33 of the Bombay civil services conduct, Discipline and appeal Rules.

H.M.P.W.D., has raised (p.95) the following points on this case:

"(a) an occupant received 2 rooms, 1 of which he sub-let could be not have been given 1 room in the 1st case."

(b) In this matter canwe work only in accordance with the B.C.S. Rules.

(c) What position are we in if the occupant should take case to Court".

These papers are forwarded to the H.L.A. for remarks on the points raised by H.E.,P.W.D.

3, Report at (a) under rule 1 in section III of appendix 2 to the B.C.S.R. Manual Vol II., excepting employees at the Government Central Press all inferior Government servants employed in Government Offices in the City of Bombay shall be entitled to rent free quarters in the Development Chawls. Those residing at Worli Chawls may be given to rooms each, except that unmarried inferior Government servants who have no near relatives living with them and married inferior Government servants whose families are not living with them should be alloted only one room. Those residing in other chawls will be entitled to one room only.

This rules was amended by C.R.F.D. No. 4(43, dated the 23rd August 1941 by the addition of the following.

"Government servants in inferior service who are given rooms in the Worli Chawls on or after the 1st September 1941 will be alloted only one room each. Inferior Government servants who are in possession of two rooms each, shall so long as they continue to be in such possession be excluded from the scope ofthis restriction. Forfeiture of the concession of the rent free quarter, consequent

n sub-letting of rooms, will for this purpose, constitute a break in continuity."

It will be seen that the concession of giving two rooms relates only to the Gorli Chawls and that there was no compulsion on Government to give two rooms prior to 1-2-1941 in to the inferior Government Servants there also as the words "may be given" suggest. The question whether an inferior Government should or should not be given two rooms was before 1-2-1941 in the discretion of Government.

Point etc (b) Apart from the penalties proposed by the P. C. penalty of making the inferior Government

Duties of the R.L.A.

...e legal position stated in para. 2 of H.Q.R. ...ctive note 4 p.15 and to compe... the authorities the execution of the award can be withdrawn.

The consideration of restrictive questions is granted under rules made in section 141 of Appendix E to the Army Civil Service Rules. The withdrawal of such concessions will also be caused by these rules. The Rent Restriction Act being inapplicable, the Civil Court will have no jurisdiction to entertain a claim if a Government servant is deprived of the concession of restrictive quarters in accordance with the provisions of the aforesaid rules.

Sd/-
17/5/

Remembrancer of Legal Affairs.

U.O. to H.Q.R., No. 5507 dated the 17th May 1947.

...r/21/4

It is no doubt true that as stated by the Chief Secy. rules 188 and 189 of the B.C.S. Rules contemplate different situations, for while the former provides for reduction from the amount of pension of a Government Servant whose service has not been thoroughly satisfactory, the latter provides for withholding or withdrawing a pension or any part of it if the pensioner-

(i) be convicted fo a serious crime, or

(ii) be found to have been guilty of grave misconduct either during or after the completion of his Service. It will be evident that while rule 188 provides for reduction of pension of a Government Servant for unsatisfactory service, rule 189 is applicable to cases in which the pension of a pensioner is proposed to be withheld or withdrawn.

The term "pensioner" is not defined in the Rules but it would ordinarily mean a Government Servant who has retired from service and is entitled to receive pension. In para 1 of his note dated 25/1/1947, the Secy. P.W.D. observes thus:-

"This was discussed with the Hon'ble Minister on the 25th Jan. 1947 when it was pointed out that Mr. Narayanrao superannuates on the 13th February 1947, and what happens after that date was not clear. On the Hon'ble Minister's instructions, I consulted the Chief Secy., who informed me that there had been other similar instances that Services automatically ended on the date of superannuation, but that any enquiry being

uld continue, and penalties, if found
cessary, could be enforced by reduction of
the earned pension". Apparently, therefore,
Mr. Naryanrao may be deemd to have retired
from Service with effect from 13th Feb. 1947.
Consequently, at the time when the Departmental
enqury commences, Mr. Naryanrao would bot
longer be in Government Service but would
be a "Pensioner" which the meaning of rule
189. That being the case, it would be
necessary to suitably modify para 3 of the
Charge sheet and reference may be made
to rule 189 instead of to rule 188.

(vide p.101 ante)

Id/7/8/
A.L.R. Reply may be:

It is true as observed by the Chief Secretary that rules 188 and 189 of the Bombay Civil Services Rules contemplate different situations, But in the present case the action proposed to be taken against Mr. Naryanrao is based not on the ground of his unsatisfactory service but on the ground of certain definite charges of misconduct at the fag-end of his service. To charge a Government servant with misconduct is different from saying that his service was unsatisfactory, for the former would be a blur on his reputation while the latter is not. In other words the charge of misconduct is a serious charge. Whether to punish him under rule 188 and 189 is entirely within the discretion of Government and the fact that Government proposes to punish him under rule 189 would bot mitigate the seriousness of the charge. It is one of the broad rules of natural justice that no party is to be condemned unheard and this rule

It is true as observed the Chief Secretary that rule 150 and 189 of the Bombay Civil Services Rules Contemplate different situations. But in the present case the action proposed to be taken against Mr. Narayanrao is based not on the ground of his unsatisfactory service but on the ground of certain definite charges of misconduct at the end of his service. To charge a Government servant with misconduct is different from saying that his service was unsatisfactory, for the former would be a slur on his reputation while the latter is not. In other words the charge of misconduct is a serious charge. Whether to punish him under rule 188 or rule 189 is entirely within the discretion of Government and the fact that Government proposes to punish him under rule 188 would not mitigate the seriousness of the charge. It is one of the broad rules of natural justice that no party is to be condemned unheard and this rule includes hearing of such party in person. To say that a Government servant is guilty of misconduct is to condemn him. The provision for holding an enquiry for misconduct under rule 189 is based on the aforesaid general principle of natural justice and there is no reason why such opportunity should not be given to the Government servant to clear his conduct even though Government proposes to take action under rule 188. It was for this reason that the R.L.A. in his last opinion suggested that a regular enquiry should be held, although rule 189 does not make such enquiry obligatory.

Sd/-
Remembrancer of Legal Affairs.

U.R.No P.W.D., No. 6263 dated the 12th August 1947

Mr/21/4

It does not appear from these papers that Mr. Barki has received any amount of pension sanctioned to him and even if he has accepted any under protest that would not estop him from asking Government to hold a regular inquiry into his conduct and to reinstate him in service if the inquiry proved favourable to him.

2. The order of self-discharge was passed by the D.P.I. on 5-8-41. The order of self-discharge amounts to removal from service and as it was passed without an inquiry as provided in note 1 to rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules it was an invalid order. The general rule is that except as otherwise provided by statute servants of the Crown hold their appointments at the pleasure of the Crown. Sub-section(3) of section 240 of the Government of India Act, 1935, imposes in certain cases certain statutory obligations to be carried out before dismissal is effected, breach of which will give to the person adversely affected a cause of action. The statutory obligation to be carried out under the section is to give to the person before he is dismissed a reasonable opportunity of showing cause against the action proposed against him. As no such opportunity was given to Mr. Barki he has a cause of action against Government and it would be open to him to file a suit against Government for compensation for wrongful dismissal from service. But such a suit will now be time-barred as it will fall under Article 115 in the First Schedule to the Indian Limitation Act, 1908, under which the

period of limitation is three years from the date of dismissal from service.'

8. Mr. Barki's appointment as Agctt. Deputy Educational Inspector must be deemed to have been made by the Government and as such any order of dismissal from service could not be passed by the D.P.I. in face of the provisions of sub-section(2) of section 240 of the Government of India Act. ~~If~~/section 240/of the Act is enacted in unqualified terms and the statutory prohibition in the section to the effect that no office-holder shall be dismissed from service by any authority subordinate to that by which he was appointed could not be qualified or taken away by statutory rules. (Suraj Narain Anand vs. The North West Frontier Province P.L.J. Vol IV p. 22). Mr. Barki's dismissal by the D.P.I. must therefore be held to be inoperative as one made by an official who is prohibited by statute from making it. In this view, it would be open to Mr. Barki to bring a suit for reinstatement in service within a period of six years from the date of his dismissal, but since even this period of six years has expired on 4.8.47 his suit would be now time-barred.

4. In the circumstances, the best course to adopt would be to grant Mr. Barki the enhanced pension already proposed and as he has no remedy in law, it would be in his interest to accept the same. It will not be advisable at this distant date of time to hold any departmental enquiry into his conduct. Moreover, as pointed out in R.L.A's opinion No. 3765 dated the 17th April, 1947 at pp. 35-37 ante, if an enquiry is to be held..

against Mr. Barki, he will have to be suspended from service and since the order of suspension cannot be made retrospectively he will have to be paid full pay until the date of his suspension.

Sd/-
Remembrancer of Legal Affairs.

U.R. to E. & I.D. No. 358/Confl. dated the 23rd August, 1947

Mr/21/8

It appears that in 1944, the services of Dr. B.S. Kadam, Deputy Director of Agriculture (Crop Research), Bombay, were loaned to the Government of India for appointment as Assistant Agricultural Commissioner. Thereafter in 1945 the Government of India made available a non-lapsable grant of Rs.10 lakhs per annum for the improvement, development and marketing of tobacco in India and these funds were directed to be administered by an Indian Central Tobacco Committee set up by the Government of India in 1945. That Committee selected Dr. Kadam for appointment to the post of Director of Tobacco Research on terms and conditions specified in the accompaniment to their letter, dated 20th August 1945, and requested the Bombay Government to agree to Dr. Kadam's deputation on foreign service. On the 18th June 1947 the special Committee of the Cabinet of the Central Government appointed to work out the machinery for implementing the partition of India decided as follows:

(1) Every Government servant Indian or European should be given an opportunity to select the Government he wishes to serve;

(2) each Government servant should be asked to state at the same time whether he wishes to be given an opportunity to reconsider his choice within a period of six months from the date of the transfer of power;

(3) Separate cadres should be drawn up for the two future governments on the basis of the replies received;

(4) the actual transfers of personnel would have to be arranged over a period of time. During that period a stand-still agreement should be made in respect of each service and cadre so that the efficiency of the various organisations affected by the division is preserved.

p.t.o.

In view of the aforesaid decision a questionnaire was issued to Dr. Kadam enquiring whether he was willing to serve the Indian Dominion or the Pakistan Dominion. Dr. Kadam seems to have elected to serve Pakistan and has signified his choice as provisional. H.P.M. does not agree to his going to Pakistan and coming back when he chooses. He, however, desires H.M., Legal Department and Remembrancer of Legal Affairs to advise if the Bombay Government can stop him.

2. Rule 9(20) of the Bombay Civil Services Rules defines foreign service as service in which a Government servant receives his substantive pay with the sanction of Government from any source other than the revenue of the Governor General in Council or of a Province or the Railway Fund (when established) or from a company working a State Railway. That Dr. Kadam has been transferred to foreign service so defined has never been doubted, and Government Resolution (R.C.D.) No 10500/39 dated the 27th February 1946 affirms that position. Under Rule 111 a Government servant transferred to foreign service shall remain in the cadre or cadres in which he was included in a substantive or officiating capacity immediately before his transfer and may be given such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. It is apparent from this rule read with the other rules in Chapter VI of the Bombay Civil Services Rules that Dr. Kada, though in foreign service, for all intents and purposes, remains a servant of this Government. The decision of

the special Committee of the Cabinet stated above gives a choice only to servants of the Central Government Dr. Kadam is a servant of the Bombay Government and further being in foreign service, that is to say while serving as Director of the Tobacco Research Committee, he cannot be considered to be in the service of the Central Government. Consequently, he will not be entitled to the option given by the Central Government for its servants. The Bombay Government would be perfectly competent to withhold its consent to Dr. Kadam's election to serve Pakistan and thereby stop him from going there.

Sd/-
11/9/

Remembrancer of Legal Affairs.

U. R. to A.R.D.D. No. 9153 dated the 12th September 1947

Mr/21/4

CONFIDENTIAL / REGISTERED

No. 339/45/A
H.Q. Bombay Area
Colaba, Bombay
24th July 47

The Remembrancer of
Legal Affairs,
Bombay Castle,
B O M B A Y

Subj:- PROPOSED VICIL SUIT FOR RECOVERY OF ALLEGED ARREARS OF PAY. MR. S. MOSES, EX M.T. SUPERVISOR (CIVILIAN) OF HQ KIRKEE VEHICLE DEPOT, KIRKEE.

A copy of letter No. AD 219/A of 15 Jul 47 from HQ Kirkee Vehicle Depot is forwarded herewith, together with copies of all relevant correspondence in this case.

For information a Part I Order is a daily unit order giving instructions for the units administration. It is not published outside the unit. Whereas a Part II Order relates to Pay & Allowances, appointments, etc., and is published outside the unit, e.g. to the Pay Authorities.

It is requested that your legal advice may please be forwarded to this HQ at an early date, on the legal calidity of the calim made by Mr. S. Moses.

LT.COL.
AAG.

Mr/21/4

No.9064 Office of the
Remembrancer of Legal Affairs
Bombay Castle, 6th September 1947

To,

H.Q.,
Bombay Area, Colaba,
Bombay

Subject:- Proposed Civil suit for recovery of alleged arrears of pay-Mr. C.Moses, Ex. M.T. Supervisor (Civilian) of HQ Kirkee vehicle depot- Kirkee.

Sir,

With reference to your confidential letter No. 338/45/A, dated the 24th July 1947, on the above subject, I have the honour to state as follows:-

By Depot Order No DDO 1074/45 (Part I-B), dated the 31st March 1945, Mr. Moses was provisionally appointed Civilian Labour Officer by the Chief Ordance Officer, Vehicles Department, Kirkee, pending final sanction by higher authorities and he assumed duties from 4th April 1947. The Chief Ordnance officer was not authorised to appoint C.L.Os. as under the orders of the Government of India War Department (Army Branch) letter, dated the 8th January 1943, they could be recruited only by the General Officer Commanding-in-Chief of Army Command. It is stated that these powers of recruitment have been delegated to the HAOC. The appointment of Mr. Moses as Civilian Labour Officer, though Provisional, was therefore unauthorised. The post of C.L.O is a Gazette of India. Mr. Moses's appointment is not notified in the Gazette of India and publication of his appointment in the Daily Depot Part I order, dated 31-3-1945, under the signature of the C.O.O. or that he possessed an identity card does not make him a gazetted officer.

and may not be a valid ground for caliming pay as C.L.O. from 31-3-1945. Although Mr Moses was provisionally appointed subject to the sanction of a higher authority his appointment continued from 31-3-1945 ti 31-1-1947 i.e. for one year and ten months and he discharged the duties attached to the new post. In view of these circumstances, It appears, that Mr. Mooses is, in e uity, entitled to some more remuneration though not the pay attached to the post. The Military authorities may see if the matter can be compromised by offering Mr. Moses some recompense in the nature of special or additional pay for the duties actually discharged by him.

The file and papers accompanying your letter under reference are returned herewith.

Yours obedient servant,

Sd/-
6/9/

Remembrancer of Legal Affairs.

Mr/21/4

Although there is no legal objection first to dismissing a Government serv nt for misconduct and then to prosecuting him for the offence, ordinarily prosecution should precede the departmental inquiry against a Government servant for misconduct, arising out of the same facts, since otherwise it is likely to lead to an anomalous position; for if dismissal proceeds prosecution and if such prosecution ultimately fails, the order of dismissal would be deemed shaken. Consequently if Government desires to prosecute the Government servants in this case, it is desirable to proceed with the prosecution first before dismissing them after inquiry.

2. It appears from the report of the Deputy Director of Agriculture, Bombay Province, Poona, that Mr. Samant seems to have committed offences of forgery cheating and misapporpriation and has destroyed Government records with a view to destroy evidence. But the report does not implicate Messrs. B.P.Joshi, Cashier M.V. Deokar, Field Manager and G.D. Rahane. Mr. Kamble, Agricultural Assistant is said to have assisted Mr1 Samant in committing offences. It is possible that Mr. Samant could not have committed these offences without the assistance and co-operation of his subordinates. The papers would, therefore, have to be forwarded to the Police for a thorough investigation for deciding as to who should be prosecuted, if Government decide upon prosecution.

3. However, from the papers it appears that a departmental inquiry against Mr. Samant was already in progress when the papers were called for. The material has already been collected by the Inquiry Officer; and he can proceed with the inquiry against all concerned without much delay. He is of opinion that upon that material not only Mr. Samant but Messrs. Joshi, Deokar and Rahane should be dismissed. A prosecution through the Police, initiated at this stage, would only result in protracting the proceedings;

and even then it is doubtful whether Messrs. Joshi, Deokar and Rahane would be fully implicated on evidence which would be deemed sufficient in a court of law. The higher officers viz. Mr. Dubhashi and Mr. Kelkar cannot obviously be prosecuted and even if they too are censured, departmental proceedings would still have to be taken against them.

4. In these circumstances, dismissal of Mr. Samant and his associates would prove more effective than their prosecution; Disciplinary action, perhaps more severe than what is proposed by the Deputy Director of Agriculture, can also be taken by holding departmental proceedings against Mr. Dubhashi and Mr. Kelekar; for it is the negligence of these officers which made the fraud possible.

5. It is for Government to decide whether Departmental action is not the more effective remedy in this case. If departmental action is decided upon, the inquiry against Mr. Samant may be resumed, after observing all the formalities prescribed by the rules; and the inquiry against the rest may be intiated at the same time.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.&S.D. No. 3-p-confl dated the 11th September 1947

Submi ted.

2. It appears that Mr. G.I. Pathan was holding a temporary post of overseer under the District Land Improvement Officer (Survey) W.D. Bijapur from the February 1945. He was arrested on the 8th February 1946 by the sub Inspector of Police, Bijapur City for disposing of stolen cycle abd therefore his services were terminated by the D.L.I. Officer Bijapur with effect from that dated without notice or assigning any reasons therefore as his sercices were so terminable. Mr. Pathan has now representated to the Agricultural Commissioner that the order passed by the D.L.I. Officer be revised so as to suspend him pending the decision of the case against him instead of dismissing him. The Agricultural Commissioner who consulted the Director of Agricultural Engineering agrees with the latter that Mr. Pathan be reinstated in service and if necessary suspended pending judgment of the case against him. In the A.G.R.D.D. office note it is observed that-

"As a matter of fact of fact Mr. Pathan's sercices should not have been teminated bu the should have been suspended from service and given a chance to prove his honour. Such provision is ade in the B.C.S.R. 152. As however, the services have already been terminated it does not appear necessary to cancel the or ders and re-instate Mr. Pathan as proposed. If necessary he may be given an assurance that his case will be considerd for a suitable appointment in case he is honourably acquitted by the Court".

The R.L.A. is requested to advice.

3. The R.L.A. has held that "although there is nothing

in the Bombay Civil Services conduct descipline and Appeal Rules which requires a month's notice to be given to temporary servants, it appears that if the period of temporary appointment is not specified reasonable notice must be given to him." and that" month's notice would be reasonable in the case of such servants". (R.L.A's Opinion No. 9479, dated 18-12-1945).

The order of the Land Improvement Officer, Southern, Bijapur provides that-

"The services of Mr. G.I. Pathan, overseer, Survey, under the District Land Improvement Officer, Survey, W.D. Bijapur are dispensed with, with effect from 8-12-1946 the date o which he was arrested by the Police, sub-Inspector of Bijapur City in Cr. No. 135/46 for disposing of a stolen cylee".

It is stated t at the conditions of service of Mr. Pathan were that his services were terminable without notice and without assigining any reasons. If so then strictly speaking a notice was not necessary. The order terminating services of Mr. Pathan is neither of discharge nor dismissal so as to be irregular in view of rule 55 of the Civil Services (Classification Control and Appeal) Rules read with rule 33 of the Bombay Civil Services Conduct Descipline and Appeal Rules. The order no doubt brings in the incident of his having been involved in a criminal case but that is not stated to be ground for dispensing with his services so as to invoke the provisions of rule 156 of the Bombay civil Services Rules. The course proposed by the A.R.D. Deptt on p. 5 ante is legally correct.

Id/8/9/47

A.A.S.

The order of No. XII-11069 dated 8-12-46, ssued by the Land Improvement Officer, South Bijapur, reads thus-

The services of Mr. G.I. Pathan, Overseer, Survey under the District Land Improvement Officer, Survery, W.D. Bijapur, are dispensed with, with effect from 8-12-1946, the date of which he was arrested by the Police Sub-Inspector of Bijapur City in Criminal Case No. 135/46 for disposing of a stolen cycle".

The order applies that the services of Mr. Pathan

Office of the R.L.A.

Dismissal of a Government Servant

Ordinarily a Government servant holding a temporary post is entitled to a month's notice, but such notice would not be necessary in cases where the terms of service expressly provide for the termination of services without notice. The Agricultural Commissioner says that the services of Mr. G.I. Pathan were terminable without notice and without assigning any reasons. His services where by an order dated the 8th December 1946, dispensed with with effect from 8th December 1946, the date on which he was arrested by the Police Sub-Inspector for disposing of a stolen article. The order does not expressly say that his services were dispensed with because of his arrest for a stolen article. Assuming that the order impliedly assigns his arrest as the reason for termination of his services the assignment of this reason cannot make the order illegal when his services could be dispensed even without assigning any reason. Consequently the order terminating the services of Mr. Pathan is legal. Whether he should be reemployed if he is acquitted is a matter for the administrative department to decide; but it is inadvisable to give him any assurance of re-employment.

Sd/-
23/9/
Remembrancer of Legal Affairs.

U. R. To A.R.D.D. No 9469
dated the 24th September 1947.

~~Mr/23/8x~~

Mr/24/4

Submitted.

The facts of this case are briefly these: Mr.N.M.Wadhwana, Asstt. Engineer in charge of a Sub-Division, was in receipt of a "Permanent Travelling Allowance" in accordance with entry 51 in Appendix XXII (B.C.S.R.) and Rule 383. He was however not maintaining "a fast moving power driven conveyance" though requested to do so by the Superintending Engineer. On account of this the Superintending Engineer, with the concurrence of Government, stopped the P.T.A. Against this Mr. Wadhwana made a representation to Government but that was turned down (vide notes at pp. 15-16) ante and the letter at pp.17/18). Mr. Wadhwana has now again approached Government with a request to allow him to take the matters to a Civil Court for decision. His contention is that under the B.C.S.R. it is not incumbent upon the officer to maintain a conveyance in order to be able to draw the P.T.A. (vide copy of his letter at pp.77-78 ante). The P.W.D. considers that the dispute is purely an administrative question and hence the request of Mr. Wadhwana for permission to approach a Court should not be granted. Before informing him accordingly, papers are being shown to R.L.A. (vide para. 5 of P.W.D. o.m. at p.86 ante)

The short question for R.L.A's consideration is whether permission should be granted to Mr. Wadhwana to take the matter regarding stoppage of his P.T.A. to a Civil Court. Such permission does not appear to be any statutory necessity and whe-

it should be granted or not is purely a question of policy. The P.R.A. is granted under the B.C.S.R. and its grant or stoppage is governed by thos Rules. Before stopping it Government must have considered the relevant Rules and under Rule 3 of the B.C.S.R. interpreatation of Government is final. In these circumstances, it would be undesirable to allow Mr. Wadhwana to drag the matter to a Court of law. There is hence no objection to refuse the Permission asked for.

Id/111/47

A.A.S.

Under rule 31 of the Bombay Civil Services Conduct, Discipline and Appeal Rules, a Govt. servant may not, without the previous sanction of Govt, have recourse to any Court or to the Press for the vindication of his public acts or character from defamatory attacks. It further provides that nothing in the rule shall limit or otherwise affect the right of any Govt. servant to vindicate his private acts or character. Under rule 3 of the B.C.S.R. Govt. reserve to themselves the right of interpreting the rules. The second para. of rule 31 of the Bom. C.S.C.D. and Appeal Rules and rule 3 of the B.C.S.R. read together would appear to indicate that a Govt. servant in service cannot have recourse to any Court against Govt in regards to questions which involve interpretation of the proviwions of the B.C.S.R. There appears, therefore, no objection to refusing permission to Mr. Wadhwana to approach a Civil Court. If approved, the papers may be "Seen and returned.

Id/3/11

A.L.R.

Rule 383 of the Bombay Civil Services Rules provides for payment of permanent travelling allowance and under rule 3 the right of in erpreting the B.C.S.R. vests...

Office of the R.L.A.

Permission to file a Suit for withholding P.T.A.

Bombay Civil Services Rules.

Rules 383 of the Bombay Civil Services Rules provides for payment of permanent travelling allowance and under rule 3, the right of interpreting the B.C.S.R. vests in Government. Consequently, whether Mr. N.H. Wadhwana, Assistant Engineer, is entitled to p.t.a. under rule 383B, notwithstanding the fact that he is not maintaining a fast moving power-driven conveyance would be a matter for Government to decide. There is no provision in the B.C.S.R. or any other law prohibiting a Government servant from going to a court of law to test the decision of Government on the point of disallowing any p.t.a. Since, however, Mr. Wadhwana has asked for permission of Government to file a suit in this connection, such sanction should be refused by Government and he may even be informed that this may have to be treated as an act of insubordination. It should then be left to him to decide whether he should or should not file a suit.

Sd/-
6/11

Remembrancer of Legal Affairs.

U.O. to P.& S.D. No. 10692
dated the 7th November 1947

Mr/24/4

23/5

2315